Supreme Court, U.S.
FILED
APR 11 1995
OFFICE OF THE CLERK

No. 94-1261

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

ARCHER-DANIELS-MIDLAND COMPANY, on its own behalf and as common parent of an affiliated group of corporations, FLEISCHMANN-KURTH MALTING COMPANY, INCORPORATED, and COEVAL, INCORPORATED,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY BRIEF TO BRIEF IN OPPOSITION

JOSEPH ANGLAND *
FELIX B. LAUGHLIN
DAVID E. WATTS
DEWEY BALLANTINE
1301 Avenue of the Americas
New York, NY 10019-6092
(212) 259-8000

A. JAMES SHAFTER
KEHART, SHAFTER, HUGHES & WEBBER, P.C.
Suite 500
First of America Center
P.O. Box 871
Decatur, IL 62525-0871
(217) 428-4689
Attorneys for Petitioners

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

No. 94-1261

ARCHER-DANIELS-MIDLAND COMPANY, on its own behalf and as common parent of an affiliated group of corporations, FLEISCHMANN-KURTH MALTING COMPANY, INCORPORATED, and COEVAL, INCORPORATED,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

REPLY BRIEF TO BRIEF IN OPPOSITION

ARGUMENT

As petitioners* ("ADM") have made clear, the significance of this case arises from the principles of statutory construction upon which the court of appeals decision rests. Those principles of construction (i) conflict with those applied by other courts of appeals (see cases cited Pet.

---

* Petitioner's Rule 29.1 statement appears at Pet. ii.

12), and (ii) would sanction the circumvention of this Court's holdings that (absent extraordinary circumstances) legislative history may aid in the interpretation of statutory language but may not override that language.

As the petition explained, the court of appeals decision rests on two interrelated, invalid premises: first, that legislative history may override statutory language in the case of complex statutes such as the Internal Revenue Code; and second, that a statutory interpretation is reasonable even where it requires giving a single phrase contradictory meanings with respect to the clauses that it governs. Respondent's position, in essence, is that the court of appeals interpretation of the statute is reasonable and leads to no contradiction.

But there is no avoiding the contradiction. The introductory language of section 994(a), which talks about the DISC's deriving "taxable income attributable to" the export sale, applies equally to all three pricing formulae in section 994(a)(1)-(3). If, as the court of appeals and respondent maintain, this language bars the attribution to the DISC of more than the combined taxable income on the export sale for taxpayers who (like ADM) elect the first pricing formula, it must do so as well for taxpayers who elect the third pricing formula, the arm's length formula. Respondent concedes, as it must, that this limitation does not apply to the arm's length formula. The contradiction arising from the court of appeals interpretation of the statutory language renders that interpretation an unreasonable alternative to ADM's interpretation, which the court of appeals acknowledged was consistent with both the language and the policy of the statute.

Respondent makes two points with respect to the inconsistent interpretation that a combined taxable income limitation applies to the gross receipts formula but not to the arm's length pricing formula. One is irrelevant, and the other is logically unsound.

First, respondent contends that it was sound policy not to apply the no-loss rule to the arm's length formula. Whether or not such a policy distinction can be made, it says nothing about the interpretation of the language at issue. If the court of appeals interpretation of the introductory statutory language were correct, the no-loss rule would have to apply equally to the arm's length pricing formula.

Second, at pages 10 and 11 of its brief in opposition, respondent attempts to argue that there is no contradiction because under the arm's length formula "the attribution . . . is on the basis of a market price." This tautology in no way resolves the contradiction. If a DISC may not derive income "attributable" to an export sale that exceeds the combined income on the sale, then the statute precludes attributing such an amount of income to the DISC regardless of the market price. Respondent's argument at best suggests a reason why Congress might have imposed a limitation on the first two formulae but not on the arm's length formula. Congress, however, did not do so; it used the same introductory language, and hence any limitation thereby created would have to apply equally to each of the three formulae.

Respondent also fails to demonstrate that, even absent the contradition, it would be plausible to interpret the statutory language as the court of appeals did. The language permitting a DISC to realize income "attributable" to export sales in the amount of 4 percent of those sales simply cannot be read, as the court of appeals did, to mean that no such attribution to the DISC can be made if it would result in a loss to the related supplier. Such a reading would make sense, if at all, only if there were no such thing as negative taxable income. As the petition notes, and as respondent cannot deny, taxable income may be negative. Thus, there is nothing at all unusual, much less impossible, about attributing to one party taxable income in excess of the combined taxable

income on a transaction and attributing negative taxable income to the other party. Given that fact, the sole linguistic reed upon which the court of appeals opinion rests simply dissolves.

Finally, respondent resurrects an argument that was rejected by the district court and not even raised in the court of appeals. Respondent notes that the statute provides that each of the formulae states only a maximum amount of income that the DISC may realize, and misconstrues this to mean that the statute thus in effect allows the IRS to prescribe a limitation to a lower amount applicable to only two of the three formulae. However, as determined by the district court below, the form of the statute clearly grants to the taxpayer, not the Internal Revenue Service, the authority to fix intercompany pricing so that the DISC realizes any amount of taxable income that is within the formula limit. That is, each of such formulae provides a calculation for limiting the taxpayer's pricing authority that is self-contained and complete, and has nothing to do with whether there is any overall gain or loss on the export sales. Contrary therefore to the respondent's argument (p. 8), the terms of the statute indeed encourage export sales by providing a "guarantee" that the taxpayer may attribute any amount of income to its DISC that is not in excess of the particular section 994(a) formula it selects.

CONCLUSION

Barring exceptional circumstances, which no one claims are involved here, a committee report may be used only to interpret statutory language, not to override it. The court of appeals essentially gutted this principle by suggesting that the statute admitted of two interpretations, hence permitting resort to legislative history, even though only one interpretation does not create internal statutory contradictions. The court of appeals avoided confronting these contradictions, stating that only the first two of the

three formulae "need be discussed." (Pet. App. 2a) If a court can circumvent the statutory language by labeling it ambiguous even where there is only one logically consistent interpretation of it and by disregarding the analytical inconsistencies its alternative interpretation creates, the principle that legislative history cannot override statutory language has been rendered meaningless. In contrast to other courts of appeals, which have disregarded legislative history that conflicts with the only plausible interpretation of statutory language, the court of appeals here turned to such history even though only one interpretation of the language ultimately works. This Court should grant certiorari to make clear that the proscription against using legislative history to override statutory language may not be so easily evaded.

Respectfully submitted,

JOSEPH ANGLAND *
FELIX B. LAUGHLIN
DAVID E. WATTS
DEWEY BALLANTINE
1301 Avenue of the Americas
New York, NY 10019-6092
(212) 259-8000

A. JAMES SHAFTER
KEHART, SHAFTER, HUGHES
& WEBBER, P.C.
Suite 500
First of America Center
P.O. Box 871
Decatur, IL 62525-0871
(217) 428-4689
Attorneys for Petitioners

Dated: April 11, 1995

* Counsel of Record